



## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 43 CFR Part 2

[DOI-2021-0014; 223D0102DM, DS65100000, DLSN00000, DX.65103]

RIN 1090-AB15

### Privacy Act Regulations; Exemption for the Insider Threat Program

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Final rule.

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**SUMMARY:** The Department of the Interior (DOI) is issuing a final rule to amend its regulations to exempt certain records in the INTERIOR/DOI-50, Insider Threat Program, system of records from one or more provisions of the Privacy Act of 1974 because of criminal, civil, and administrative law enforcement requirements.

**DATES:** The final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, DOI\_Privacy@ios.doi.gov or (202) 208-1605.

### SUPPLEMENTARY INFORMATION:

#### Background

DOI published a notice of proposed rulemaking (NPRM) in the *Federal Register* at 86 FR 51645 (September 16, 2021) proposing to exempt portions of the INTERIOR/DOI-50, Insider Threat Program, system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(5) due to criminal, civil, and administrative law enforcement requirements. DOI published a system of records notice

(SORN) for INTERIOR/DOI-50, Insider Threat Program, in the *Federal Register* at 86 FR 48753 (August 31, 2021). Comments were invited on both the INTERIOR/DOI-50, Insider Threat Program, SORN and NPRM. DOI received no comments on the SORN and six comments on the NPRM that were not relevant or did not result in a change to the rulemaking. The rulemaking will be implemented as proposed with a correction to the redesignated paragraph (e).

DOI previously published a final rule for INTERIOR/DOI-46, Physical Security Access Files, in the *Federal Register* at 86 FR 49927 (September 7, 2021) to add new and redesignated paragraphs for DOI Privacy Act exemptions at 43 CFR 2.254. In that rulemaking, a new paragraph (b) was reserved for exemptions claimed under 5 U.S.C. 552a(k)(1) as indicated in the published NPRM for the INTERIOR/DOI-50, Insider Threat Program, system of records. Paragraph (c) for investigatory records exempt under 5 U.S.C. 552a(k)(5) was redesignated to paragraph (e) to allow for a new paragraph (d) for exemptions claimed under 5 U.S.C. 552(k)(3) related to records maintained in connection with providing protective services.

The NPRM for the INTERIOR/DOI-50, Insider Threat Program, system of records described the new reserved paragraph (b) and new redesignated paragraph (e) for the proposed exemptions claimed under 5 U.S.C. 552a(k)(1) and (k)(5). However, the proposed redesignation of paragraph (e) was inadvertently changed during the publication process for the NPRM, which resulted in an incorrect reference to paragraph (c) for investigatory records exempt under 5 U.S.C. 552a(k)(5). This final rule corrects the redesignation of paragraph (e) and addresses a formatting error that occurred during publication of the final rule for INTERIOR/DOI-46, Physical Security Access Files, that resulted in the erroneous addition of a paragraph (f) instead of the appropriate reference to subsection (f) of the Privacy Act.

## **Procedural Requirements**

## **1. Regulatory Planning and Review (E.O. 12866 and E.O. 13563).**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

## **2. Regulatory Flexibility Act.**

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

## **3. Small Business Regulatory Enforcement Fairness Act (SBREFA).**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

#### **4. Unfunded Mandates Reform Act.**

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

#### **5. Takings (E.O. 12630).**

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

#### **6. Federalism (E.O. 13132).**

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

#### **7. Civil Justice Reform (E.O. 12988).**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Does not unduly burden the judicial system.
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### **8. Consultation with Indian Tribes (E.O. 13175).**

In accordance with Executive Order 13175, the Department of the Interior has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes.

#### **9. Paperwork Reduction Act.**

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

#### **10. National Environmental Policy Act.**

This rule does not constitute a major Federal Action significantly affecting the quality for the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### **11. Effects on Energy Supply (E.O. 13211).**

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

#### **12. Clarity of this Regulation.**

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (Pub. L. 111-274), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

### **List of Subjects in 43 CFR Part 2**

Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, the Department of the Interior amends 43 CFR part 2 as follows:

### **PART 2 - - FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY**

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

2. Amend § 2.254 by adding paragraph (b), revising paragraph (e) introductory text, and adding paragraph (e)(6) to read as follows:

#### **§ 2.254 Exemptions.**

\* \* \* \* \*

(b) *Classified records exempt under 5 U.S.C. 552a(k)(1)*. Pursuant to 5 U.S.C. 552a(k)(1), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

- (1) INTERIOR/DOI-50, Insider Threat Program.
- (2) [Reserved]

\* \* \* \* \*

(e) *Investigatory records exempt under 5 U.S.C. 552a(k)(5)*. Pursuant to 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

\* \* \* \* \*

(6) INTERIOR/DOI-50, Insider Threat Program.

**Signed:** \_\_\_\_\_

Teri Barnett  
Departmental Privacy Officer  
Department of the Interior

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